

## Food and Nutrition Service, USDA

## § 240.1

written request with the Director, Administrative Review Staff, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Va. 22302 for a review of the record. Such request must be postmarked within 30 calendar days of the date of delivery of the sanction notice and the envelope containing the request shall be prominently marked "REQUEST FOR REVIEW." If the State agency does not request a review within 30 calendar days of the date of delivery of the sanction notice, the administrative decision on the sanction shall be final.

(3) Upon receipt of a request for review, FNS shall promptly provide the State agency with a written acknowledgment of the request. The acknowledgment shall include the name and address of the FNS Administrative Review Officer reviewing the sanction. The acknowledgment shall also notify the State agency that any additional information in support of its position must be submitted within 30 calendar days of the receipt of the acknowledgment.

(4) When a review is requested, the FNS Administrative Review Officer shall review all available information and shall make a final determination within 45 calendar days after receipt of the State agency's additional information. The final determination shall take effect upon delivery of the written notice of this final decision to the State agency.

(5) The final determination of the FNS Administrative Review Officer will be the Department's final decision in the case and will not be subject to reconsideration.

(Sec. 14, Pub. L. 95-166, 91 Stat. 1338 (42 U.S.C. 1776); sec. 7, Pub. L. 95-627, 92 Stat. 3621 (42 U.S.C. 1776); secs. 805 and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1773); sec. 7(a), Pub. L. 95-627, 93 Stat. 3622, 42 U.S.C. 1751)

[41 FR 32405, Aug. 3, 1976, as amended at 44 FR 48958, Aug. 21, 1979; Amdt. 6, 47 FR 14135, Apr. 2, 1982; Amdt. 11, 48 FR 27892, June 17, 1983; Amdt. 12, 49 FR 18989, May 4, 1984; Amdt. 14, 51 FR 27152, July 30, 1986; Amdt. 15, 51 FR 33862, Sept. 24, 1986; Amdt. 17, 55 FR 1378, Jan. 16, 1990; 56 FR 32950, July 17, 1991; 60 FR 15463, Mar. 24, 1995; 64 FR 50744, Sept. 20, 1999; 71 FR 39519, July 13, 2006]

### § 235.12 Information collection/record-keeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control number
235.3(b) .....	0584-0067
235.4(d), (e) .....	0584-0067
235.7(a) .....	0584-0067
235.7(b) .....	0584-0067
235.7(c) .....	0584-0067
235.8(a), (b) .....	0584-0067
235.9(c), (d) .....	0584-0067
235.11(b)(2) .....	0584-0067
235.11(b)(5)(ii) .....	0584-0067
235.11(f) .....	0584-0067

[64 FR 50744, Sept. 20, 1999]

## PART 240—CASH IN LIEU OF DONATED FOODS

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AUTHORITY: 42 U.S.C. 612c note, 1751, 1755, 1762a, 1765, 1766, 1779.

SOURCE: 47 FR 15982, Apr. 13, 1982, unless otherwise noted.

### § 240.1 General purpose and scope.

(a) Each school year the Department programs agricultural commodities and other foods to States for delivery to program and commodity schools, nonresidential child care institutions, and service institutions pursuant to the regulations governing the donation of foods for use in the United States, its territories and possessions and areas under its jurisdiction (7 CFR part 250).

(b) Section 6(b) of the Act requires that not later than June 1 of each school year, the Secretary shall make

an estimate of the value of the agricultural commodities and other foods that will be delivered during that school year for use in lunch programs by schools participating in the National School Lunch Program (7 CFR part 210). If this estimate is less than the total level of assistance authorized under section 6(e) of the Act the Secretary shall pay to the State administering agency not later than July 1 of that school year, an amount of funds equal to the difference between the value of donated foods as then programmed for that school year and the total level of assistance authorized under such section.

(c) Section 6(e)(1) of the Act requires:

(1) That for each school year, the total commodity assistance, or cash in lieu thereof, available to each State for the National School Lunch Program shall be the amount obtained by multiplying the national average value of donated foods, described in paragraph (c)(2) of this section, by the number of lunches served in that State in the preceding school year; and

(2) That the national average value of foods donated to schools participating in the National School Lunch Program, or cash payments made in lieu thereof, shall be 11 cents, adjusted on July 1, 1982, and each July 1 thereafter to reflect changes in the Price Index for Food Used in Schools and Institutions. Section 6(e)(1) further requires that not less than 75 percent of the assistance under that section shall be in the form of donated foods for the National School Lunch Program. After the end of each school year, FNS shall reconcile the number of lunches served by schools in each State with the number served in the preceding school year and, based on such reconciliation, shall increase or reduce subsequent commodity assistance or cash in lieu thereof provided to each State.

(d) Section 12(g) of the Act provides that whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this Act or the Child Nutrition Act of 1966, whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains

such funds, assets, or property to his use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of \$100 or more, be fined not more than \$10,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than \$100, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

(e) Section 14(f) of the Act provides that the value of foods donated to States for use in commodity schools for any school year shall be the sum of the national average value of donated foods established under section 6(e) of the Act and the national average payment established under section 4 of the Act. Section 14(f) also provides that such schools shall be eligible to receive up to five cents of such value in cash for processing and handling expenses related to the use of the donated foods.

(f) Sections 17(h)(1) (B) and (C) of the Act provide that the value of commodities, or cash in lieu thereof, donated to States for use in nonresidential child or adult care institutions participating in the Child and Adult Care Food Program (7 CFR part 226) for any school year shall be, at a minimum, the amount obtained by multiplying the number of lunches and suppers served during the preceding school year by the rate established for lunches for that school year under section 6(e) of the Act. At the end of each school year, FNS shall reconcile the number of lunches and suppers served in participating institutions in each State during such school year with the number of lunches and suppers served in the preceding school year and, based on such reconciliation, shall increase or reduce subsequent commodity assistance or cash in lieu of commodities provided to each State.

(g) Section 16 of the Act provides that a State which has phased out its food distribution facilities prior to June 30, 1974, may elect to receive cash payments in lieu of donated foods for the purposes of the applicable child nutrition programs—i.e., the National School Lunch Program, the Summer Food Service Program for Children (7

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CFR part 225) and the Child Care Food Program.

(h) These regulations prescribe the methods for determination of the amount of payments, the manner of disbursement and the requirements for accountability for funds when these respective statutory authorities require the Department to make cash payments in lieu of donating agricultural commodities and other foods.

[47 FR 15982, Apr. 13, 1982, as amended at 52 FR 7267, Mar. 10, 1987; 58 FR 39120, July 22, 1993]

### § 240.2 Definitions.

For the purpose of this part the term:

*Act* means the National School Lunch Act, as amended.

*Child Care Food Program* means the Program authorized by section 17 of the Act.

*Commodity school* means a school that does not participate in the National School Lunch Program under part 210 of this chapter but which operates a nonprofit lunch program under agreement with the State educational agency or FNSRO and receives donated foods, or donated foods and cash or services of a value of up to 5 cents per lunch in lieu of donated foods under this part for processing and handling the foods.

*Department* means the U.S. Department of Agriculture.

*Distributing agencies* means State, Federal or private agencies which enter into agreements with the Department for the distribution of donated foods to program schools, commodity schools, and nonresidential child care institutions.

*Donated-food processing and handling expenses* means any expenses incurred by or on behalf of a commodity school for processing or other aspects of the preparation, delivery, and storage of donated foods for use in its lunch program.

*Donated foods* means foods donated, or available for donation, by the Department under any of the legislation referred to in part 250 of this chapter.

*Fiscal year* means the period of 12 months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

*FNS* means the Food and Nutrition Service of the Department.

*FNSRO* means the appropriate Food and Nutrition Service Regional Office.

*National School Lunch Program* means the Program authorized by sections 4 and 11 of the Act.

*Nonprofit* means exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1954, as amended; or in the Commonwealth of Puerto Rico, certified as nonprofit by its Governor.

*Nonresidential child care institution* means any child care center, day care home, or sponsoring organization (as those terms are defined in part 226 of this chapter) which participates in the Child Care Food Program.

*Program school* means a school which participates in the National School Lunch Program.

*School* means (1) an educational unit of high school grade or under except for a private school with an average yearly tuition exceeding \$1,500 per child, operating under public or nonprofit private ownership in a single building or complex of buildings. The term "high school grade or under" includes classes of preprimary grade when they are conducted in a school having classes of primary or higher grade, or when they are recognized as a part of the educational system in the State, regardless of whether such preprimary grade classes are conducted in a school having classes of primary or higher grade; (2) with the exception of residential summer camps which participate in the Summer Food Service Program for Children, Job Corps centers funded by the Department of Labor and private foster homes, any public or nonprofit private child care institution, or distinct part of such institution, which (i) maintains children in residence, (ii) operates principally for the care of children, and (iii) if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government. The term "child care institutions" includes, but is not limited to: homes for the mentally retarded, the emotionally disturbed, the physically handicapped, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary